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OFFICE OF PETITIONS

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| In re Application of | : | |
| Gregory James Newell | : | |
| Application No. 10/609,276 | : | |
| Filed: June 27, 2003 | : | DECISION ON |
| Title of Invention: | : | PETITION |
| RECONFIGURABLE POWER HANDLING DEVICE | : | |

This is a decision in response to the Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.181, filed May 22, 2006.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application was filed on June 27, 2003. On September 29, 2003, the Office of Initial Patent Examination mailed a Notice to File Corrected Application Papers requiring replacement drawings.

Applicant filed corrected Drawings on December 1, 2003.

Thereafter, this Office mailed a Notice of Incomplete reply (Nonprovisional) on January 16, 2004, informing Applicant that the reply filed December 1, 2003 was incomplete because the filing fee was insufficient. The Notice required additional filing fees and a returned-check surcharge. The Notice informed Applicant that the period for reply remained as set forth in the September 29, 2003 Notice.

On February 23, 2004, the Office mailed a Withdrawal of Previously Sent Notice, withdrawing the January 16, 2004 Notice of Incomplete reply (Nonprovisional), and also mailed a corrected Notice of Incomplete reply (Nonprovisional). The corrected Notice required additional filing fees and a returned-check processing fee. The Withdrawal of Previously Sent Notice informed Applicant that "[t]he time period for the reply runs from the mail date of the corrected Notice." (Emphasis supplied).

No reply to the corrected Notice was received. Accordingly, the application became abandoned April 24, 2004.

The instant petition

Applicant files the instant petition and provides that a complete and proper reply to the September 29, 2003 Notice was filed. Applicant asserts that the Notice of Incomplete Reply (Nonprovisional), mailed January 14, 2004, was the first Notice applicant received regarding the insufficient fees and, as such, the Notice of Abandonment, which states that the application became abandoned for failure to reply to the September 29, 2003 Notice, is incorrect. Applicant and requests withdrawal of the holding of abandonment.

Applicable Law, Rules and MPEP

35 U.S.C. § 111(a)(3) states that "[t]he application must be accompanied by the fee required by law." 35 U.S.C. § 111(a)(4) states that "[u]pon failure to submit the fee... within such prescribed period, the application shall be regarded as abandoned."

Further to this, 37 CFR 1.53(f)(1) provides that

[i]f an application which has been accorded a filing date pursuant to paragraph (b) or (d) of this section does not include the basic filing fee... applicant will be notified and given a period of time within which to pay the basic filing fee, search fee, and examination fee, file an oath or declaration in an application under paragraph (b) of this section, and pay the surcharge if required by § 1.16(f) to avoid abandonment.

Analysis and conclusion

An application becomes abandoned by operation of law for failing to timely submit the fee. See 35 U.S.C. § 111(a)(4). Here, Applicant was informed of the requirement to submit the fees and given two (2) months within which to submit the fees. Office records indicate that both the Withdrawal of Previously Sent Notice, withdrawing the January 16, 2004 Notice of Incomplete reply (Nonprovisional), and the corrected Notice of Incomplete reply (Nonprovisional), were mailed to Petitioner herein at the correspondence address specified in the New Power of Attorney filed January 5, 2004.

Applicant failed to timely reply to the corrected Notice within two (2) months of the mail date of the corrected Notice. Accordingly, the application became abandoned. While the Notice of Abandonment incorrectly states the reason for abandonment, the Notice does not affect the status of the application.

For the above reasons, the petition is dismissed.

Alternative venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently \$1500, reduced to \$750.00 for a small entity.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
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By FAX: (571) 273-8300
Attn: Office of Petitions

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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


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